



Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
007287.00016

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Application Number

09/909,630

Filed

July 19, 2001

First Named Inventor

Yakov KAMEN

Art Unit

2628

Examiner

Caschera, Antonio A

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.

/Rick H. Lin/

Signature

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

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Registration number if acting under 37 CFR 1.34 _____

August 21, 2009

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.

Submit multiple forms if more than one signature is required, see below*.

*Total of 2 forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:	Attorney Docket No.: 007287.00016
Yakov KAMEN	
Serial No.: 09/909,630	Examiner: Caschera, Antonio A.
Filed: July 19, 2001	Group Art Unit: 2628
For: Method and System for Modification of EPG Object Attributes	Confirmation No.: 9979

PRE-APPEAL BRIEF REQUEST FOR REVIEW

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Sir:

PETITION FOR EXTENSION OF TIME

This paper is responsive to the Final Office Action mailed April 21, 2009, and the Advisory Action mailed July 29, 2009. Applicants request a one (1) month extension of time until August 21, 2009. The Commissioner is authorized to charge our Deposit Account No. 19-0733 in the amount of \$130.00. If additional fees are required or if an overpayment is made, the Commissioner is authorized to charge or credit our Deposit Account No. 19-0733, accordingly.

Remarks

Applicants respectfully request review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is requested for the reasons stated in the below remarks.

Having received and reviewed the Final Office Action dated April 21, 2009 ("Final Office Action"), and the Advisory Action dated July 29, 2009 ("Advisory Action"),

Applicants respectfully submit that the standing rejections are based on one or more clear errors, and that the appeal process can be avoided through a pre-appeal brief review as set forth in the Official Gazette notice of July 12, 2005.

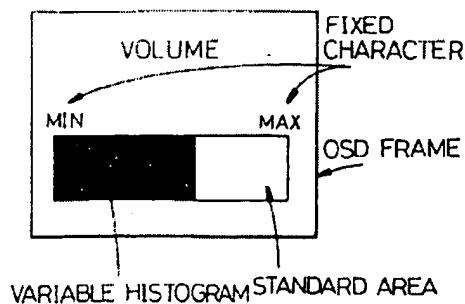
The pending rejections fail to address all the claim limitations, and exhibit clear factual and legal errors with respect to the cited references. The specific errors relied upon in this Pre-Appeal Brief Request for Review includes the following:

- The Office made clear error in relying on Jeong et al. (U.S. Patent No. 6,256,027, hereinafter “Jeong”) in view of Schein et al. (U.S. Patent No. 6,075,575, hereinafter “Schein”) in its rejection of claims 1, 11 and 21, as discussed in Applicant’s Request for Reconsideration dated July 20, 2009 (“Response”), at pp. 7-8. For example, claim 1 recites, *inter alia*,

modifying a non-textual attribute associated with the object by an incremental amount for each of at least two times that the object is selected, wherein the non-textual attribute *after each modification* visually indicates a *number* of times the object has been selected.

(Emphasis added). Such features are not described in Jeong and Schein, either alone or in combination. For example, Jeong is directed to displaying an on-screen display menu enabling a user to conveniently adjust the selected function. See Abstract; see also e.g., Jeong, FIG. 3A, reproduced below.

FIG. 3A



FIGs. 3A-3G describe different designs which may be used to display the volume selected by the user. The Advisory Action interprets the volume bar (e.g., FIG 3A, shown above) to read on the features of claim 1, stating that,

“a user selects the volume control to a maximum number/volume thus exhibiting ‘maximum number of times’ shown by the volume bar of Jeong

et al. at ‘full’ filled length and then the user selects the volume control one less than a maximum number volume thus exhibiting “one less than a number of times” selected and shown by the volume bar being almost fully filled in length.”

See Advisory Action, page 2. The Advisory Action implicitly interprets the “volume level” of Jeong’s volume bar to be the non-textual attribute. However, such an interpretation fails at least because a volume level as displayed in Jeong is not indicative of a number of user *selections*, but merely indicates *how much louder or softer* the sound can be modified. Stated differently, the interpretation confuses the distinction between a number of times that the volume bar can be selected (e.g., adjusted) and a range of volume that the volume bar visually illustrates. Seemingly, the volume bar can be selected or adjusted an infinite number of times by the user between the MIN and MAX volume levels.

More particularly, comparing the example discussed in the Advisory Action, where the volume level is modified from “MIN” to “MAX” and then to “one less than MAX, with a situation where the user adjusts the volume level directly from “MIN” to “one less than MAX”, Applicants note that the user would not be able to distinguish these two situations based on the identical volume level shown on the volume bar after the final modification (setting the volume to “one less than MAX”). That is, the user would not be able to distinguish how many times the volume level has been selected by merely viewing the volume level on the volume bar. As such, the selected volume level fails to indicate the number of times that the volume bar has been selected.

As described above, the volume bar of Jeong *after each modification* does not visually indicates a *number* of times the volume bar has been selected. Therefore, Jeong fails to teach or suggest the claim 1 feature of modifying a non-textual attribute associated with the object by an incremental amount for each of at least two times that the object is selected, wherein the non-textual attribute after each modification visually indicates a number of times the object has been selected.

Schein fails to cure the deficiencies of Jeong. Incidentally, Schein suffers from the same issues as Jeong. As discussed in the Applicant’s previous response of February 6, 2009, after a user clicks on a scroll bar, the position of the scroll bar does not visually indicate to the user the number of times the scroll bar has been clicked. At best, the user

may deduce in Schein that the scroll bar has been clicked; however, a user would not know the number of times that the scroll bar has been clicked unless the user independently kept track.

Therefore, even assuming, but not conceding that a combination of Jeong and Schein would have been appropriate, such a combination would have failed to result in the features of claim 1.

Independent claims 11 and 21 recite features similar to the distinguishing features of claim 1, and are allowable for at least the same reasons as claim 1 above.

While Applicant believes that the above points represent the clearest errors made by the Office, Applicant reserves the right to appeal on other bases and errors. Applicant further reserves the right to address the rejections of any other claims not identified above on appeal should the appeal of this case proceed after the Office's consideration of this paper.

Conclusion

All issues having been addressed, Applicant respectfully submits that the instant application is in condition for allowance, and respectfully solicits prompt notification of the same. However, if for any reason the review panel believes the application is not in condition for allowance or there are any questions, the review panel is invited to contact the undersigned at (202) 824-3265.

Respectfully submitted,

BANNER & WITCOFF, LTD.

Dated: August 21, 2009

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